

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. See 86 Ill. Adm. Code 130.220. Lessors under true leases incur Illinois Use Tax liability on their cost price of tangible personal property purchased for rental purposes. See 86 Ill. Adm. Code 130.2010. (This is a GIL.)

November 15, 2004

Dear Xxxxx:

This letter is in response to your letter dated December 9, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC provides a complete solution for financial transactions that require the determination, calculation, and reporting of U.S. sales and use tax. The ABC system automatically determines sales and use tax for all state, county, city, transit or special district taxes associated with a given address. ABC also provides product taxability. ABC determines whether particular products are taxable or exempt, and customers map their products to our product listing.

We are seeking guidance on the taxability of leases and rentals. Our specific product taxability questions are detailed below. It would be helpful to us if you indicate any statutes or authorities you use.

Questions:

1. In general, are leases and rentals subject to sales and/or use tax?
2. Are purchases which are made for the sole purpose of lease or rental subject to sales and/or use tax?

3. Are purchases which are made for consumption as well as for lease or rental (subsequent lease or rental) subject to sales and/or use tax?
4. Are leases or rentals with the option to purchase subject to sales and/or use tax?
5. Are the services of an operator furnished with a lease or rental subject to sales and/or use tax?
6. Is the repair of leased or rented property subject to sales and/or use tax?
7. Are leases between related corporations subject to sales and/or use tax?

Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

You have inquired about the taxation of leases in Illinois. We refer you to 86 Ill. Adm. Code 130.2010, the Department's administrative rule that covers the taxation of leases. Please note that the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: "conditional sales" and "true leases". A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. In addition, sales of computers and communications equipment utilized for any hospital purpose that are sold to persons who lease those items to exempt hospitals (See 86 Ill. Adm. Code 130.2011) and sales of tangible personal property to a lessor who leases that property to a governmental body (See 86 Ill. Adm. Code 130.2012) are not subject to Retailers' Occupation Tax.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code Part 140 regarding sales of service and Service Occupation Tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).]

Sincerely,

Samuel J. Moore
Associate Counsel

SJM:msk